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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: SAN ANTONIO, TX Date: AUG 25 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT:

PUBLIC COPY

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (I-212 application) was denied by the District Director, San Antonio, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nigeria. The applicant was found to be inadmissible to the United States pursuant to sections 212(a)(9)(A)(ii) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A)(ii) and 1182(a)(6)(C)(i), for having been ordered deported from the United States and for having attempted to gain an immigration benefit in the United States by willfully misrepresenting a material fact. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to live with his U.S. citizen wife and to be near his U.S. citizen child.

The district director concluded that the favorable factors in the applicant's case did not outweigh the unfavorable factors. The I-212 application was denied accordingly.

On appeal, counsel asserts that the applicant did not misrepresent himself to the Immigration and Naturalization Service ("Service", now the Bureau of Citizenship and Immigration Services, "Bureau"). Counsel asserts further that the applicant's daughter and former wife, as well as his present wife and her son, will suffer emotional and financial hardship if the applicant's waiver of inadmissibility is not granted.

Counsel's claim that the applicant did not misrepresent himself to the Service in order to obtain an immigration benefit is unconvincing. The evidence in the record indicates that the applicant filed two asylum applications. One, filed in November 1991 was withdrawn in May 1994 so that the applicant could regularize his status in the U.S. through other means. The second asylum application was filed in June 1992. The record clearly indicates that the asylum application filed in 1992 was fraudulent. In his application, the applicant claimed to be a native, citizen and resident of Liberia. The applicant further claimed that he had been subjected to severe persecution in Liberia due to his Krahn tribal membership. The asylum application was signed under penalty of perjury. Moreover, the record indicates that the applicant verbally repeated these claims under oath to a Service asylum officer when he was interviewed in 1992. The applicant's claim was found to be not credible in 1994, and the applicant was placed into deportation proceedings. The record indicates that the

Service sent written notice to the applicant of his asylum denial and of his deportation proceedings. The applicant failed to appear at his immigration court proceedings, however, and he was ordered deported in absentia on July 11, 1995. Despite counsel's assertions to the contrary, there is no evidence in the record that the applicant ever attempted to withdraw his 1992 asylum application or that he ever attempted to retract the information in that application.

The record indicates that the applicant voluntarily departed and reentered the U.S. in October 1995. He is therefore inadmissible pursuant to section 212(a)(9)(A) of the Act.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) states in pertinent part:

> (9) Aliens Previously Removed.-
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> (A) Certain aliens previously removed.-
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> (i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
>
> (ii) Other aliens.-Any alien not described ``in clause (i) who-
>
> (I) has been ordered removed under section 240 or any other provision of law, or
>
> (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
>
> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the

> United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

Based on the evidence in the record, the applicant is also inadmissible pursuant to section 212(a)(6)(C) of the Act.

Section 212(a)(6)(C) states, in pertinent part:

> (C) Misrepresentation.-
>
> (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) states in pertinent part:

> (i)(1) The Attorney General [Secretary] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . . .

Section 212.7 of the Service [Bureau] Operational Instructions (O.I.) specifies that when an alien requires both permission to reapply for admission (I-212 application) and a waiver of grounds of inadmissibility (I-601 application), the I-212 application must be adjudicated first. If the I-212 application is denied, the I-601 application should be rejected and the fee refunded.

Approval of an I-212 application requires that the favorable aspects of an applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation,

> length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973.

The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS,* 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered.

In *Matter of Martinez-Torres,* 10 I&N Dec. 776 (BIA 1964), the BIA held that in the case of an applicant who is **mandatorily** inadmissible to the U.S. "no purpose would be served in granting [the] application for permission to reapply for admission into the United States." In that case, a district director's denial of an I-212 application as a matter of administrative discretion was thus found to be proper.

The present case differs from *Martinez-Torres* in that the grounds of inadmissibility in the applicant's case do allow for a waiver of inadmissibility and thus do not render the applicant statutorily or mandatorily inadmissible from the United States. The director's conclusion that no purpose would be served in adjudicating or approving the applicant's I-212 application was thus erroneous.

Moreover, as noted in the O.I. instructions above, the applicant's I-212 application must be adjudicated first. Only if the I-212 application is approved does a subsequent I-601 Waiver of Inadmissibility application need to be filed and adjudicated. The district director thus erred in accepting and adjudicating the applicant's I-601 application without having first adjudicated and granted the applicant's I-212 application.

Nevertheless, the AAO finds that the above errors are harmless, in that the district director's combined I-212 and I-601 application decisions discuss the favorable and unfavorable aspects of the applicant's case and clearly reflect that the I-212 application would have been denied by the district director based on a balancing of those factors.

The favorable factors in the applicant's case are as follows:

The applicant has a U.S. citizen daughter [redacted], born in April 1994. However, the record indicates that the

applicant's former wife was awarded custody of their daughter in 1997, and that [redacted] has not lived with the applicant since that time. The record indicates that the applicant pays approximately $1560.00 a month in child support payments. It is noted, however, that based on the temporary court order documents submitted into the record, these payments cover child support for three children. [redacted] portion of the payment would therefore amount to about $520.00 a month, significantly less than the more than $1500.00 a month claimed by counsel. Counsel and the applicant assert that [redacted] mother would be unable to support her family without the applicant's child support payments. It is noted, however, that the record contains no evidence to demonstrate why the applicant's ex-wife, a 40-year-old woman with past work experience and no health problems, would be unable to work and support her family. It is further noted that, although the temporary court order submitted by counsel indicates that the applicant was awarded visitation with his children, there is no evidence in the record to indicate the extent to which the applicant exercises his visitation rights, or regarding the level of hardship [redacted] would experience if the applicant's I-212 application were denied.

The record indicates that the applicant has remarried and that his current wife is a U.S. citizen. It is noted, however, that the applicant did not marry his current wife until 1998, after he was ordered deported. The favorable weight accorded to this marriage will therefore be accorded diminished weight. Moreover, although counsel asserts that the applicant's current wife and her son will suffer hardship if the applicant's I-212 application is not approved, the record contains no detailed or independent documentation or evidence to corroborate this general assertion.

The record reflects the following unfavorable factors in the present case:

The applicant filed a fraudulent asylum application in 1991, in which he claimed to be a native, citizen and resident of Liberia. The applicant fraudulently claimed that he had been subjected to severe persecution in Liberia due to his Krahn tribal membership. The asylum application was signed under penalty of perjury. Moreover, the record indicates that the applicant verbally repeated these claims under oath to a Service asylum officer, when he was interviewed in 1992. The applicant's claim was found to be not credible in 1994, and the applicant was placed into deportation proceedings. The record indicates that the applicant failed to appear at his immigration court proceedings, however, and he was ordered deported in absentia on July 11, 1995. The record indicates further that the applicant failed to depart the country and remain abroad pursuant to the terms of his deportation order, and that he continues to deny that he intentionally attempted to misrepresent material facts in

order to gain an immigration benefit (political asylum).

The above unfavorable factors demonstrate a clear disregard for the immigration laws of the United States as well as a lack of reformation or rehabilitation on the applicant's part.

Family ties in the United States do not, by themselves, compel a favorable exercise of discretion for an I-212 application. *See Matter of Castaneda,* 14 I&N Dec. 387 (Regional Commissioner 1973). Moreover, *Jaimez-Revolla v. Bell,* 598 F.2d 243 (D.C. Cir., 1979) held that, despite the fact that an I-212 applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative, an I-212 application may be denied if the applicant has demonstrated a proven disregard for immigration laws.

In discretionary matters, the applicant bears the full burden of proving that he merits an exercise of discretion by the Secretary. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant in this case has failed to establish that he warrants a favorable exercise of discretion.

ORDER: The appeal will be dismissed. The applicant's I-601 application should be rejected and his filing fee returned to him.